

Message Text

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TO AMEMBASSY BUENOS AIRES PRIORITY

CINCSO

C O N F I D E N T I A L STATE 117307

CINCSO FOR POLAD

E. O. 11652: GDS

TAGS: ECON, ETRD, ESTC, AR, CU, US

SUBJECT: TRADE WITH CUBA BY US FIRMS IN ARGENTINA

REF: BUENOS AIRES 4122 AND 4183

1. US EXPORT CONTROL REGULATIONS (15 CFR 368-399)
PROMULGATED UNDER THE EXPORT ADMINISTRATION ACT OF 1969 AS
AMENDED REQUIRE PRIOR USG APPROVAL FOR THE EXPORT OR RE-
EXPORT OF VIRTUALLY ANY US ORIGIN COMMODITY TO CUBA.
PARTS AND COMPONENTS EXPORTED FROM THE UNITED STATES FOR
USE IN THE MANUFACTURE OF A PRODUCT FOR EXPORT TO CUBA
ARE INCLUDED IN THIS REQUIREMENT. GENERAL USG POLICY,
WHICH IS AN INTEGRAL PART OF OUR LONG STANDING EFFORT TO
ISOLATE CUBA, IS TO DENY REQUESTS EXCEPT FOR CERTAIN NON-
COMMERCIAL HUMANITARIAN TRANSACTIONS.

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2. CUBAN ASSETS CONTROL REGULATIONS (31 CFR 515) PROHIBIT PERSONS SUBJECT TO US JURISDICTION FROM ENGAGING IN UNLICENSED TRANSACTIONS, EITHER DIRECT OR INDIRECT, WITH CUBA OR CUBAN NATIONALS. APPLICATIONS FOR LICENSES IN THE PAST ALMOST ALWAYS HAVE BEEN DENIED. CACR DOES CONTAIN GENERAL LICENSE PROVISION (515.541) PERMITTING FOREIGN SUBSIDIARIES OF US CORPORATIONS TO ENGAGE IN TRANSACTIONS WITH CUBA BUT GENERAL LICENSE DOES NOT EXTEND TO US CITIZENS WHO ARE OFFICERS OR DIRECTORS OF SUCH SUBSIDIARIES. WHERE FOREIGN SUBSIDIARY IS UNDER THE

CONTROL OF US CITIZENS, SUCH CITIZENS WOULD REQUIRE A LICENSE FROM TREASURY IN ORDER TO ENTER INTO TRANSACTIONS WITH CUBA.

3. AS GENERAL RULE GRANTING OF A LICENSE IN SPECIAL CASES IS NOT CONSISTENT WITH EQUITABLE APPLICATION OF CACR TO US CITIZEN CONTROLLED SUBSIDIARIES IN THE MANY COUNTRIES WHERE THEY ARE LOCATED. HOWEVER, APPREHENSIONS OF SOME US SUBSIDIARIES IN ARGENTINA UNDERSTANDABLE GIVEN GOA RECOGNITION OF CUBA AND STATED DESIRE TO INCREASE TRADE WITH ALL NATIONS. WHERE A US SUBSIDIARY BELIEVES THAT SPECIAL FACTORS ARE PRESENT CONCERNING A SPECIFIC TRANSACTION THAT WOULD INVOLVE DIRECT OR INDIRECT TRADE WITH CUBA IT MAY ASK ITS PARENT COMPANY TO SUBMIT A REQUEST FOR A LICENSE UNDER CUBAN ASSETS CONTROL REGULATIONS TO OFFICE FOREIGN ASSETS CONTROL, TREASURY DEPARTMENT SETTING FORTH ALL FACTORS THAT WOULD FACILITATE EVALUATION OF SPECIAL CIRCUMSTANCES THAT MAY BE PRESENT. AS STATED ABOVE, ALMOST ALL SUCH REQUESTS HAVE BEEN DENIED.

4. EMBASSY COMMENTS WILL BE HELPFUL TO DEPARTMENT IN PROPERLY ADVISING TREASURY ON ANY FUTURE LICENSE APPLICATIONS. IN EACH CASE DEPARTMENT PROBABLY WILL SEEK EMBASSY VIEWS ON A) ARGENTINE LAWS THAT WOULD BE VIOLATED BY AMERICAN SUBSIDIARY IF IT COMPLIES WITH US REGULATIONS AND REFUSES TO ENTER INTO TRANSACTIONS WITH CUBA, B) RISKS OF RETALIATION OF GOA AGAINST COMPANY OR OTHER US INTERESTS IF TRANSACTION DECLINED AND REASON

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BECOMES KNOWN, C) IMPACT DENIAL BASED ON EXTRA-TERRITORIAL APPLICATION OF US LAWS OR REGULATIONS IN ARGENTINA WOULD HAVE ON GENERAL US FOREIGN POLICY OBJECTIVES IN ARGENTINA, D) WHETHER DECISION ON TRANSACTION IS ONE NORMALLY MADE IN ARGENTINA BY SUBSIDIARY OFFICERS AND DIRECTORS AND, IF SO, WHETHER US CITIZENS CONTROL BOARD OF DIRECTORS, E) WHETHER

SUBSIDIARY HAS ANY FORM OF USG INVESTMENT GUARANTY
APPLICABLE TO ITS ARGENTINE OPERATIONS.

5. AMERICAN COMPANIES HAVE GIVEN USG FULL COOPERATION
IN PREVENTING THEIR FOREIGN SUBSIDIARIES FROM TRADING
WITH CUBA. THIS COOPERATION HAS EXTENDED BEYOND THE
LETTER OF LAWS AND REGULATIONS AND HAS BEEN APPLIED TO
SUBSIDIARIES IN COUNTRIES WHICH HAVE DIPLOMATIC
RELATIONS WITH CUBA, SUCH AS MEXICO, PERU, CHILE AND
CANADA. ACCORDINGLY, IF ASKED, US SUBSIDIARIES IN
ARGENTINA SHOULD BE ENCOURAGED TO AVOID TRANSACTIONS
WITH CUBA RATHER THAN SEEK TO EXPLORE THE LIMITS OF US

REGULATIONS. IN SPECIAL CASES WHERE THEY FEEL THEY
WOULD BE SERIOUSLY PREJUDICED BEFORE THE HOST GOVERN-
MENT BY REFUSING TO PARTICIPATE IN A TRANSACTION
DIRECTLY OR INDIRECTLY INVOLVING CUBA, THEY SHOULD
PRESENT THEIR CASE TO THE PARENT US COMPANY SO THAT IT
MAY BE GIVEN FULL CONSIDERATION BY INTERESTED
WASHINGTON AGENCIES. PORTER

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